

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re)	Case No. 03-2804
)	Chapter 11
PUMEHANA PARTNERS,)	
)	
Debtor.)	Re: Docket Nos. 179 & 184
_____)	

**MEMORANDUM DECISION ON
TRUSTEE’S MOTIONS TO RETAIN PROFESSIONALS**

McCully Associates, through its state-court-appointed receiver, moved the court to appoint a chapter 11 trustee. The court granted the receiver’s motion and the Office of the United States Trustee selected an individual to serve as trustee. The trustee has moved the court for authority to retain counsel and an accountant. The receiver of McCully Associates opposes both motions. The objections are without merit.

The receiver points out that he has demanded the election of a new trustee. He argues that it would be premature and wasteful to permit the current trustee to retain professionals. Regardless of whether it is (or is not) likely that the current trustee will be replaced, the current trustee has all of the duties and responsibilities of a trustee. The history of this case is rife with litigation and replete with allegations and findings of financial wrongdoing. It would be grossly unfair to deprive any trustee – even one whose services may be temporary – of the

benefits of professional assistance.

Approving the current trustee's retention of professionals will not tie the hands of a successor trustee in any way. If the current trustee is replaced, his successor will be entitled to select (subject to court approval) his own counsel and accountants. The current trustee's professionals will undoubtedly incur some fees, but no fees will be paid unless the court determines that the services were necessary. With this in mind, the trustee and his professionals should carefully consider what services are necessary in light of the possible election of a new trustee.

The receiver also argues that a single forensic accountant should be retained to examine both McCully Associates and Pumehana Partners. It is unclear that such an accountant would satisfy the requirement of disinterestedness under section 327. More importantly, however, a trustee is entitled to select professionals in whom he has confidence, and generally should not be forced to accept professionals selected by others.

The receiver asked for a trustee and got one. The trustee is entitled to the professional help he needs to do a proper job in a difficult case. The receiver cannot have it both ways; he cannot have the benefits of an independent trustee but avoid the additional cost which a trustee's administration sometimes entails. The

court will enter separate orders granting both applications.

DATED: Honolulu, Hawaii, February 12, 2004.



/s/ Robert J. Faris

United States Bankruptcy Judge